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**BZA-1900**  
**STEPHEN P. RUSSELL**  
**Variance**

**STAFF REPORT**  
**February 20, 2014**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is the owner along with his business partner, is seeking a variance to permit a front setback of 14' instead of the required 25' from Cherry Street for the addition of a 6' x 20' attached roofed front porch. The property is located at 6731 Cherry Street, at the corner of Howard and Cherry Streets in the unincorporated town of Stockwell, Lauramie 08 (NE) 21-3.

This property was granted two variances requested by the previous owner in 2011 (BZA-1830) to rebuild and expand a home destroyed by fire. The single-family dwelling was rebuilt; now petitioner desires to add a front porch.

**AREA ZONING PATTERNS:**

The property in question is zoned R1, single-family residential. Zoning in the town of Stockwell located north of Attica Street is solidly R1 (Single Family Residential); a mix of R1, R3, R1B, GB and NBU can be found farther south into town. Directly across Cherry and Howard Streets, property is zoned AA (Select Agricultural).

**AREA LAND USE PATTERNS:**

The subject property is located at the western edge of the unincorporated town of Stockwell. Residential uses are found to the south and east; agricultural uses dominate to the north and west.

A two-story recently constructed home is located on the property, rebuilt per the 2011-approved variances after fire damage in late 2010. The property consists of ½ of an original platted lot in the town of Stockwell which was split in the mid seventies; petitioner is the owner of both lots.

**TRAFFIC AND TRANSPORTATION:**

Cherry Street is classified as a local road and requires a 25' front setback. There are no traffic counts taken on this stretch of road, but only one other home to the east uses Cherry Street to access its driveway and garage.

Cherry Street has a larger than typical right-of-way at 60'.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

The site, like all of Stockwell, is served by sanitary sewer.

## STAFF COMMENTS:

The enduring challenge facing this property is not only its small size, 5,070 sq. ft., but also the large platted right-of-way of Cherry Street. This property is part of Fowler's Addition to the original plat of Stockwell that envisioned a town much larger than what it is today; eight additional lots are platted across the street on what is now a farm field. Cherry Street was also platted to handle a larger volume of traffic generated by these lots. While Cherry Street has a 60' right-of-way, it only has an actual pavement width of around 12.5'. Since building setbacks start at the right-of-way, not the edge of the pavement, there appears to be substantial area to meet the required front setback on this property but it is misleading because this ground is right-of-way. In 2011, staff and the previous owner inquired with the County Highway Department about the possibility of vacating a portion of the right-of-way but were met with concern over partial vacation and vacating right-of-way where Cherry Street curves to meet Howard Street.

The home was constructed per the approved variances granted unanimously by the ABZA in 2011. Petitioner and his business partner are new owners and would now like to build an uncovered front porch, extending an additional 6' into the front setback. Petitioner has indicated that the porch will remain unenclosed. A roofed concrete slab, as proposed, will not have any negative effects on sight distances. The UZO does permit stoops in the front setback. Petitioner has the option of installing a 2' wide unroofed stoop without the need for a variance.

This property consists of ½ of a lot platted in the late 1800s. A prior owner illegally split the property into two lots in the late seventies. However, with the adoption of the 1981 Unified Subdivision Ordinance, previous illegal splits were "forgiven." While there is no mechanism in the Ordinance to require replatting these lots into one, the best solution for the neighborhood is to re-establish these two lots into a single lot that more accurately reflects the nearby area. However, since the site plan reflects that the driveway will cross the lot lines, staff is less concerned about another structure built on the adjoining lot to the west.

Regarding the ballot items:

1. The Area Plan Commission at its February 19, 2014 meeting determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. A roofed porch will not have a negative impact on existing sight distances of either Cherry or Howard Streets.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. While petitioner is encroaching into the front setback, there is such a low volume of traffic (now and in the future) on Cherry and Howard Streets, there will be no adverse affects.

4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. Every other property in this plat must also observe 25' street frontage setbacks, but those lots are all well over 10,000 square feet.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. Though staff can concede that there will be no negative impacts on sight distances or the traveling public, there is nothing in the ordinance that guarantees a home has front porch. The use of the home is not substantially affected without a front porch. Additionally, the UZO permits stoops to extend two feet into the front setback; petitioner could modify the site plan to add a stoop without a variance.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed. It is only petitioner's desire to construct a 6' wide front porch that is necessitating this variance.

5b. Because use of the structure will not change without a front porch, the variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship.

**STAFF RECOMMENDATION:**

Denial